

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND
COMPANY, a Delaware corporation,

Plaintiff,

v.

CANYON GROUP LLC, a Delaware
limited liability company, and NISSAN
CHEMICAL INDUSTRIES, LTD., a
Japanese corporation,

Defendants.

C.A. NO. _____

PUBLIC VERSION

**MOTION OF PLAINTIFF FOR PRELIMINARY INJUNCTION
IN AID OF ARBITRATION**

OF COUNSEL:

A. Stephens Clay
Georgia Bar No. 129400
Ronald L. Raider
Georgia Bar No. 592192
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530

Tonya R. Deem
NC State Bar No. 23075
KILPATRICK STOCKTON LLP
1001 West Fourth Street
Winston-Salem, North Carolina 27101

Richard L. Horwitz, Esquire (#2246)
Arthur L. Dent, Esquire (#2491)
Suzanne M. Hill, Esquire (#4414)
POTTER ANDERSON & CORROON
LLP
Hercules Plaza, 1313 N. Market Street
P.O. Box 951
Wilmington, Delaware 19899-0951

Dated: April 7, 2005/676979

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

E.I. DU PONT DE NEMOURS AND)	
COMPANY, a Delaware corporation,)	
)	C.A. NO. _____
Plaintiff,)	
)	
v.)	
)	
CANYON GROUP LLC, a Delaware)	CONFIDENTIAL –
limited liability company, and NISSAN)	FILED UNDER SEAL
CHEMICAL INDUSTRIES, LTD., a)	PURSUANT TO L.R. 26.2
Japanese corporation,)	
)	
Defendants.)	

**MOTION OF PLAINTIFF FOR PRELIMINARY INJUNCTION
IN AID OF ARBITRATION**

Plaintiff E.I. du Pont de Nemours and Company ("DuPont") pursuant to Rule 65 of the Federal Rules of Civil Procedure moves the Court for the entry of a Preliminary Injunction in aid of arbitration. DuPont requests a preliminary injunction enjoining and restraining Nissan Chemicals Industries Ltd. ("Nissan"), Canyon Group LLC ("Canyon Group"), and their affiliates and contractual partners,

REDACTED

until the International Chamber of Commerce ("ICC") Arbitration Tribunal has issued a decision relative to whether provisions in the Agreement entered into between DuPont and Nissan remain in full force and effect.

In support of this Motion, DuPont shows the Court as follows:

1. As set forth more specifically in the Complaint, the declaration of Thomas J. Harkin and the supporting brief, in 1982, DuPont and Nissan entered into a
Agreement

REDACTED

2. Among its key features,

REDACTED

3. DuPont submits that

Until then, the agreement remains in full force and effect throughout the Territory. Nissan, however, insists that
the United States when the relevant United States patent rights expired in 2003.

4. DuPont has fulfilled and continues to fulfill its obligations under the

REDACTED

annually generates millions of dollars of revenue.

5. In the past several weeks, Nissan and co-defendant Canyon Group
in the United States in breach
of DuPont's rights.

REDACTED

6. authorized to
conduct business in DuPont's territory.

7. Nissan and Canyon Group have enlisted support from a third party,

REDACTED

8. Nissan and Canyon Group recently have begun soliciting distributors,
encouraging them

9. DuPont and Nissan have agreed to arbitrate "any dispute arising out of
or in connection with" in Japan in a proceeding to be overseen by the ICC.

does not provide either for interim relief or for expedited proceedings.
DuPont is prepared to arbitrate the current dispute. However, due to the impending
and short application season preservation of the status quo and the
protection of the parties' arbitration commitment requires Defendants be preliminary
enjoined

REDACTED

until an ICC panel is formed and has
accepted jurisdiction over DuPont's claims. Otherwise, DuPont's right to meaningful
arbitration and DuPont's exclusive territory rights will be irreparably damaged.

10. post-emergent applied after the
emerge from the soil. Agricultural will occur in the
United States and then not again until 2006. To meet that

application schedule, Nissan, Canyon Group and their agents or contract partners, must secure

REDACTED

11. The ICC can only provide interim injunctive relief through an appointed arbitral panel. Such appointments and ICC confirmations have the practical effect that the ICC will be unable to appoint a panel and have the matter briefed and considered before the dates

12. Unless enjoined, Nissan and Canyon Group will continue to encroach on DuPont's Territory and will inflict irreparable harm on DuPont in the form of lost goodwill, lost customers and pricing erosion.

13. DuPont is likely to prevail on the merits, which turns on the proper interpretation of Article 13 of Article 13 states:

REDACTED

(emphasis supplied).

14.

15. Disregarding Article 13's plain language, Nissan and Canyon Group contend

REDACTED

they argue

that no longer territory for DuPont. Such interpretation is wrong for at least two reasons.

REDACTED

16. DuPont's requested injunction furthers the public interest by preventing Canyon Group from interfering with DuPont's legally protected contractual rights. Additionally, this precedent might deter similar interference in the future.

17. Pursuant to Local Rule 7.1.4, Plaintiff respectfully requests leave to present oral argument in support of this Motion.

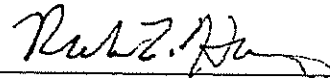
18. In further support of this motion, Plaintiff relies on the Complaint, the declaration of Thomas J. Harkin and the supporting brief, all of which are being filed contemporaneously herewith.

WHEREFORE, Plaintiff prays for on Order of the Court granting its Motion for Preliminary Injunction in Aid of Arbitration and enjoining and restraining Nissan, Canyon Group, and their affiliates and contractual partners,

REDACTED

until the
ICC Tribunal has issued a decision relative to whether exclusivity provisions in the Agreement entered into between DuPont and Nissan remain in full force and effect.

POTTER ANDERSON & CORROON
LLP



Richard L. Horwitz (#2246)
Arthur L. Dent (#2491)
Suzanne M. Hill (#4414)
Hercules Plaza, 1313 N. Market Street
P.O. Box 951
Wilmington, Delaware 19899-0951
(302) 984-6000

OF COUNSEL:

A. Stephens Clay
Georgia Bar No. 129400
Ronald L. Raider
Georgia Bar No. 592192
KILPATRICK STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
(404) 815-6500

Tonya R. Deem
NC State Bar No. 23075
KILPATRICK STOCKTON LLP
1001 West Fourth Street
Winston-Salem, North Carolina 27101
(336) 607-7485

DATED: April 7, 2005

676945

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, Richard L. Horwitz, hereby certify that on April 14, 2005, the attached document was served via hand delivery and electronically filed with the Clerk of the Court using CM/ECF which will send notification of such filing(s) to the following and the document is available for viewing and downloading from CM/ECF:

Frederick L. Cottrell, III
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899-0551

I hereby certify that on April 14, 2005, I have emailed the documents to the following non-registered participant at the following address:

Larry Miller
Canyon Group, LLC
370 S. Main Street
Yuma, AZ 85364

By: _____



Richard L. Horwitz
Suzanne M. Hill
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, Delaware 19899-0951
(302) 984-6000
rhorwitz@potteranderson.com
shill@potteranderson.com